UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHRISTOPHER KRAFCZEK, on behalf of himself and all others similarly situated, Plaintiff, v. CABLEVISION SYSTEMS CORP. and NEPTUNE HOLDINGS US CORP. d/b/a ALTICE USA, Defendants.	Case No. ___ New York State Case Number: 602715/2017 Notice of Removal of Action by Defendants Pursuant to 28 U.S.C. § 1332(d)(2)(A) (Diversity Jurisdiction—Class Action Fairness Act)

DEFENDANTS' NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants Cablevision Systems Corp. ("Cablevision") and Neptune Holdings US Corp. (now Altice USA, Inc. ("Altice USA")), hereby remove to this Court the state-court action described below.

STATEMENT OF JURISDICTION

This is a civil action for which this Court has original jurisdiction under 28 U.S.C. § 1332(d)(A)(2), and for which removal to this Court is appropriate pursuant to 28 U.S.C. §§ 1441, 1446, and 1453, as discussed in more detail below.

BASIS FOR REMOVAL: CLASS ACTION FAIRNESS ACT

1. On March 30, 2017, Plaintiff Christopher Krafczek filed a putative class action in the Supreme Court of the State of New York, County of Nassau, under Index Number 602715/2017.

2. On April 12, 2017, Defendants were served with the Summons and Complaint. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendants are attached to this Notice of Removal as Exhibit 1.

3. This Notice has been timely filed pursuant to 28 U.S.C. § 1446(b).

4. The Supreme Court of the State of New York, County of Nassau is located within the Eastern District of New York. 28 U.S.C. § 112(c). This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

5. In his complaint, Plaintiff alleges two causes of action: (1) a violation of New York General Business Law § 349 for deceptive practices; and (2) unjust enrichment. Plaintiff alleges that Defendants failed to provide proper written notice of a change in their billing practices effective October 10, 2016—namely, that "service cancellations become effective on the last day of the then-current billing period." Compl. ¶ 21. Plaintiff alleges that insufficient written notice of this change in billing practice caused him to pay for services that he did not use.

6. The Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), which amended 28 U.S.C. § 1332 to grant federal district courts original jurisdiction over putative class actions with 100 or more class members, where the aggregate amount in controversy exceeds $5 million, and where any member of the class of plaintiffs is a citizen of a state different from any defendant. As set forth below, this action satisfies each of these requirements for original jurisdiction under CAFA.

7. **Covered Class Action.** This action meets CAFA's definition of a class action, which is "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B); *see* 28 U.S.C. § 1453(a). The putative class action complaint in this case plainly satisfies this requirement. *See* Compl. ¶¶ 34-42.

8. **Class Action Consisting of More than 100 Members.** Plaintiff seeks certification of a nationwide class and a New York subclass. Compl. ¶ 34. The complaint alleges that "there are hundreds to thousands of consumers who are Class Members." *Id.* ¶ 36. Accordingly, the complaint alleges that the aggregate number of putative class members is at least 100 persons, as required by 28 U.S.C. § 1332(d)(5)(B).

9. **The Parties Are Minimally Diverse.** CAFA requires minimal diversity, that is, at least one putative class member must be a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2)(A).

10. Defendant Cablevision is incorporated under the laws of Delaware and maintains its principal place of business in New York. Cablevision is therefore a citizen of Delaware and New York within the meaning of 28 U.S.C. § 1332.

11. Defendant Altice USA is incorporated under the laws of Delaware and has a principal place of business in New York. Altice USA is therefore a citizen of Delaware and New York within the meaning of 28 U.S.C. § 1332.

12. Plaintiff alleges that he is a "citizen of the State of New York." Compl. ¶ 11.

13. Although there is not diversity between the named parties, under 28 U.S.C. § 1332(d)(2)(A), removal is proper if **at least one putative class member** is a "citizen of a State

different from any defendant." Here, the complaint is filed on behalf of a nationwide class, and specifically alleges that "two consumers in New Jersey cancelled their service only to find out that they would nevertheless be responsible for all charges through the end of their current billing cycles." Compl. ¶¶ 27, 34. These two New Jersey customers are members of the putative nationwide class (*id.* ¶ 34), meaning that at least one putative class member is a "citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

14. **The Amount in Controversy Exceeds $5 Million.** Under CAFA, the claims of the individual class members are aggregated to determine if the amount in controversy exceeds the required "sum or value of $5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2), (d)(6); *see also Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 59 (2d Cir. 2006) ("CAFA explicitly provides for the aggregation of each class member's claims in determining whether the amount in controversy is at least $5,000,000."). While Defendants deny the claims alleged in Plaintiff's complaint and further deny that Plaintiff or any putative class member is entitled to any monetary or other relief, the amount in controversy here satisfies the jurisdictional threshold.

15. The complaint alleges that Plaintiff seeks "recovery of actual damages or $50, whichever is greater; discretionary treble damages up to $1,000; punitive damages; [and] attorneys' fees and costs" for the alleged GBL violation, and "reimbursement, restitution, and disgorgement" for the unjust enrichment claim. Compl. ¶¶ 54, 61. Plaintiff's requests for actual damages and reimbursement alone satisfy the amount in controversy. Defendants again deny that Plaintiff's claims have any merit and that he or any putative class member is entitled to relief. *See Orlander v. Staples, Inc.*, 2013 WL 5863544, at *2 (S.D.N.Y. Oct. 31, 2013) ("[T]he jurisdictional determination is to be made on the basis of the plaintiff's allegations, not on the

likelihood of recovery."). But according to Defendants' records, Defendants' customers in New York, Connecticut, and New Jersey who voluntarily disconnected their service between October 2016 and May 3, 2017 have been billed, in the aggregate, over $5 million for the period of time challenged in the complaint: namely, the period between the date a customer placed his or her order to disconnect service and the last day of that customer's then-current billing period. Decl. of Randy Spencer ¶ 2.

16. Plaintiff's request for attorneys' fees only further bolsters the conclusion that the $5 million amount in controversy is satisfied here. Attorneys' fees "can be considered as part of the amount in controversy where they are anticipated or awarded in the governing statute." *Pollack v. Trustmark Ins. Co.*, 367 F. Supp. 2d 293, 298 (E.D.N.Y. 2005); *see also Fields v. Sony Corp. of Am.*, 2014 WL 3877431, at *2 (S.D.N.Y. Aug. 4, 2014) (same). Here, Plaintiff's first cause of action is brought under N.Y. Gen. Bus. Law § 349, which authorizes an award for attorneys' fees. N.Y. Gen. Bus. Law § 349(h) ("The court may award reasonable attorney's fees to a prevailing plaintiff."); *Pollack*, 367 F. Supp. 2d at 298 (holding that attorney's fees should be considered as part of the amount in controversy for GBL claims).

17. Accordingly, the amount in controversy exceeds $5 million. *See Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) ("[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.").

NOTICE TO ADVERSE PARTIES AND STATE COURT

18. In accordance with 28 U.S.C. § 1446(d), Defendants will promptly file in the Supreme Court of the State of New York, County of Nassau, and serve Plaintiff with a copy of a

Notice to the Supreme Court and to Plaintiff of Filing of Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

CONCLUSION

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants hereby remove this action from the Supreme Court of the State of New York, County of Nassau, to the United States District Court for the Eastern District of New York.

Respectfully submitted.

Dated: May 12, 2017

MAYER BROWN LLP

By: /s/ Matthew D. Ingber
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